Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIROKI ENDO, HIDEYA KOBARI,
KOJI UEDA and HIROYOSHI SAGO

Appeal No. 1998-1637
Application No. 08/389,119

HEARD: January 23, 2001

Before GARRIS, KRATZ and PAWLIKOWSKI, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the refusal of the examiner to allow claims 1, 2, 4 through 8, 10 through 15, 17 and 19 as amended subsequent to the final rejection. The other claims in the application, which are claims 3, 9, 16 and 18, have been indicated by the examiner as being allowable.

The subject matter on appeal relates to a method of forming a coating film which includes the step of rotating an object to be processed in the form of a plate in a first rotational action at a low speed for dispersing the application liquid on the surface of the object and in a second rotational action at a high speed for adjusting a thickness of the dispersed application liquid on the surface of the object. This appealed subject matter is adequately illustrated by independent claim 1 which reads as follows:

1. A method of forming a coating film by dropping application liquid on a surface of an object to be processed in the form of a plate having irregularities formed thereon and dispersing the application liquid on the surface of the object using a centrifugal force generated by rotating the object, comprising the steps of:

rotating an object to be processed in the form of a plate in a first rotational action at a low speed for dispersing the application liquid on the surface of the object and in a second rotational action at a high speed for adjusting a thickness of the dispersed application liquid on the surface of the object, said first and second rotational actions being separated by a time interval; and

setting the time interval between the first and the second rotational actions to a value equal to or greater than ten times a duration of the first rotational action and setting a duration of the second rotational action to a value equal to or greater than three times the duration of the first rotational action.

No prior art has been relied upon by the examiner in the rejection before us on this appeal.

The appealed claims are rejected under the second paragraph of 35 U.S.C. § 112 as failing to particularly point out and distinctly claim the subject matter which the appellants regard as their invention. On page 3 of the Answer, the examiner expresses her position as follows:

> The terms "high" and low" in claims 1, 7 and 13 are relative terms which renders these claims in definite [sic]. The term "high and "low", modifying speeds are not defined by the claims, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

We cannot sustain the above-noted rejection.

That some claim language may not be precise does not automatically render a claim offensive to the second paragraph of § 112. When a word of degree is used, as here, it must be determined whether the specification provides some standard for measuring that degree. That is, it must be determined whether one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification. Seattle Box Co. v. Industrial Crating &

Packing Inc., 731 F.2d 818, 826, 221 USPQ 568, 573-74 (Fed. Cir. 1984).

Contrary to the examiner's position, the appellants' disclosure provides an adequate standard or guidance for measuring the scope and meaning of the claim terms "low" and "high." See, for example, the exemplificative guidance provided at lines 6 through 11 on page 3 of the appellants' specification as well as figures 2 and 6 of the appellants' drawing. Additionally, as correctly indicated by the appellants, the language of the appealed claims provides guidance on these matters by reciting the functions to be achieved by these "low" and "high" speeds.

For at least the above-stated reasons, we consider the examiner's indefiniteness criticism of the appealed claims to be not well taken. It follows that the § 112, second paragraph, rejection before us cannot be sustained.

The decision of the examiner is reversed.

REVERSED

BRADLEY R. GARRIS)
Administrative Patent Judge)
)

PETER F. KRATZ Administrative Patent Judge	)	BOARD OF PATENT APPEALS AND INTERFERENCES
BEVERLY PAWLIKOWSKI Administrative Patent Judge	)	

BRG:clm

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